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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/379,704 08/24/99 BURKE

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EXAMINER

PM82/0815

KNOBBE MARTENS OLSON & BEAR LLP
620 NEWPORT CENTER DRIVE
16TH FLOOR
NEWPORT BEACH CA 92660

TRAN, K

ART UNIT

PAPER NUMBER

3634
DATE MAILED:

08/15/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/379,704

Applicant(s)

ROBERT P. BURKE

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 29, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 and 36-40 is/are pending in the application.
- 4a) Of the above, claim(s) 12, 20, 29, and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-19, 21-28, 30-32, 36, and 38-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Feb 9, 2001 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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DETAILED ACTION

Election/Restriction

Applicant's election without traverse of Group I in Paper No. 7 and Species I in Paper No. 10 are acknowledged. Accordingly, claims 12, 20, 29, and 37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "first, second, third, fourth, fifth and sixth surfaces" in claim 39 and the "seventh and eight surfaces" in claim 40 must be shown or the features canceled from the claims. No new matter should be entered.

Specification

The disclosure is objected to because the terminology associated with reference numeral "90" is inconsistent. Note on page 11, line 12 and line 15, two different terminologies are applied to a reference numeral "90". Corrections are required.

Claim Objections

Claim 1 is objected to because "attaches", line 4, should be --attach--. Correction is required.

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Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6, 23, 24, 26, 39 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 1, it appears the claim is misdescriptive and/or inaccurate because the claim sets forth for two sets of opposing flanges attach to rails that is general in T-shaped configuration is not support by the disclosure or the drawings. Note a set requires at least two elements and the drawing of Figure 6 only support for one set of the flanges (122) attach to a pair of rails (74). With respect to claim 2, there is no antecedent basis for "each ridge". With respect to claims 3 and 23, the use of "and/or" is improper because it is not known what is positively being required in claim. Claim 24 is improper because it seeks to remove the previous set forth limitation of requiring a spacer block. Claim 26, the recitation of "or" renders the claim indefinite because it is unclear to which one of the two nonequivalent alternative structures the applicant is positively set forth. Claim 39, there is no antecedent basis for the fifth and sixth surfaces. With respect to claims 39 and 40, it is not known what is being set forth to claim. In particular, it not knowing what is the first, second, third, fourth, fifth, sixth, seventh, and eight surfaces are since there is no recitation in the disclosure or referencing in the drawings

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of such surfaces in order to promote the understanding of what is being claimed so that a proper search can be performed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 36, as best as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wear et al. ('349). The claims are of such breadth that they read on pusher blocks and tracks of Wear et al. ('349). Wear ('349) discloses a combination of a pusher block and a track that meet all limitations of the claims. For example:

- a pusher block (26) with a set of opposing flanges (28, 29) attach to the two “generally” T-shaped ridge rails (22, 23);
- the opposite flanges attach more to the top and outside surfaces of the rails, see Figure 9.

Claims 7, 9, 10, 11, 13, 14, 22, 26, 29, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by applicant's submitted prior art of Jackle, III et al. ('236). The claims are of

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such breadth that they read on the pusher block and a track of Jackle, III et al. ('236) Jackle ('236) discloses an adjustable display rack that is removably attached to a frame comprising:

- a front and rear panels make up of a pair of front and rear races (210 and 212) extending the entire length of the rack (200), see Figures 1, 4 and 5;
- each race having a slot (214 and 216) receives the attachment of tracks (250) and dividers (220). The slot allows the tracks and dividers to move horizontally since the slot on each race allows the track to adjust in width, see column 2, lines 31-35;
- a removable pusher block (260) having a biasing spring member (266) that urges the block forwardly on a track, see column 6, lines 40-51; and
- each track (332) having a pair of raised rails (342) extending between the front transparent wall and a rear panel, see Figures 11 and 12 and column 8, line 18.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 21, 38, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) as applied to claims 7, 9, 10, 11, 13, 14, 22, 26, 29, and 36 above, and further in view of Hawkinson et al. ('869) and Johnson et al. ('690). Hawkinson

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('869) teaches a type of a track having a pair of projecting rails (22) in a generally T shape with projecting tie down surfaces (20) projecting inwardly below the rails. The projected tie down surfaces is to guide the moving spring underneath the pusher block. The pusher block has a pair of flanges attach to the top and outside surfaces of the rails, see Figure 4. Johnson ('690) teaches a type of pusher block (12) having two sets of opposing flanges (54a, 54b and 56a, 56b). The set of flanges comprises the outside flanges (54a and 54b) and the inside flanges (56a and 56b). The outside flanges attach to the top and outside surfaces of rails and the inside flanges extending below the outside flanges. The outside and inside flanges together defining apertures of upper and lower chamfers, see Figure 3. Considering the disclosure of Jackle, III et al. ('236) and the teachings of Hawkinson et al. ('869) and Johnson et al. ('690) taken as a whole, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the adjustable display rack of Jackle, III et al. ('236) with the provision of a type of track that has the projecting rails in generally T shape with projecting tie down surfaces as taught by Hawkinson et al. ('869) and provide the type of a pusher block having the two sets of opposing flanges as taught by Johnson et al. ('690) in order to have the pusher block attach to the T-shaped rails and the lower flanges being slidably guided under the tie down surfaces to promote securing the pusher block and prevent the pusher block from separating with the track. Further, the two sets of flanges take play in defining first, second, third, fourth, fifth, sixth, seventh and eight surfaces between the upper and lower chamfers.

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Claims 3, 16-19, 23, and 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869) and Johnson et al. ('690) as applied to claims 1, 2, 4-7, 9, 10, 11, 13, 14, 21, 22, 26, 29, 36, 38, 39 and 40 above, and further in view of Pappagallo et al. Pappagallo teaches a track system having a spacer block (100) fits onto a pusher block (101), and a side panel (70) attaches to the front and rear panels (66 and 68) by removable fasteners. See Figures 3 and 4. It would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the pusher block of Jackle, III et al. ('236) with the provision of a spacer block that is fitted onto the pusher block and provide the side panel attaches to the front and rear panels by fasteners as taught by Pappagallo in order to accommodate the pusher block to enable to push the item that is taller and wider than the pusher block and to have the side panel to be securely fixed to the front and rear panels.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869) and Johnson et al. ('690) as applied to claims 1, 2, 4-7, 9, 10, 11, 13, 14, 21, 22, 26, 29, 36, 38, 39 and 40 above, and further in view of Yablans et al. ('552). Yablans ('552) teaches a track and a divider formed in a single piece, see Figure 3. To one of ordinary skill in the art, it would have been an obvious matter of design choice to have made the track and divider in a single piece as taught Yablans et al. ('552) in order to promote the ease of manufacture and eliminate the step of assembly between the track with a divider.

Claims 15, 25, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869), Johnson et al. ('690) and Pappagallo et

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al. as applied to claims 1, 2-7, 9, 10, 11, 13, 14, 16-19, 21-24, 26, 29, 36, 38, 39 and 40 above, and further in view of Markson ('801). Markson ('801) teaches a track system having the front panel rearwardly angle toward the rear panel and a spacer block stopping member (94, 97) holding the pusher block (90) at a distance from the front panel. See Figures 17, 20 and 21. It would have been obvious to one of ordinary skill in the art to have made the retaining wall of Hawkinson et al. ('869) to project rearwardly and provide the pusher block with a spacer block stopping member as taught by Markson ('801) in order to have the rearward projecting front panel and the spacer block is to prevent the pusher block from damaging the front panel.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869), Johnson et al. ('690) and Markson ('801) as applied to claims 1, 2-7, 9, 10, 11, 13-19, 21-25, 26, 29, 30, 36, 38, 39 and 40 above, and further in view of Schmid ('099). Schmid ('099) teaches a pusher block (26) having a stop member (16) locates on the rail with a rivet (32) therethrough, see Figure 2. It would have been obvious to one of ordinary skill in the art to substitute the stop member of Markson ('801) with the stop member as taught by Schmid ('099) in order to have a stop member locates on the rails to take play in the application thus producing no unexpected results.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869) and Johnson et al. ('690) as applied to claims 1, 2, 4-7, 9, 10, 11, 13, 14, 21, 22, 26, 29, 36, 38, 39 and 40 Gold ('463). Gold ('463) teaches the track that is made by lubricious material of silicone coating. See row 3, lines 35-43. It would

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have been obvious to one of ordinary skill in the art at the time of invention was made to provide the track system of Hawkinson with material that is formed of lubricious material of coating with silicone as taught by Gold in order to have the track surface that is low in friction coefficient.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Burke, Robertson ('893) and Merl are cited to show similar configurations of design.

Response to Amendment

Applicant's arguments with respect to claims 1-11, 13-19, 21-28, 30-32, 36, and 38-40 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or 305-3598.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission.

Responses requiring a fee which applicant is paying by check **should not be** submitting by

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facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

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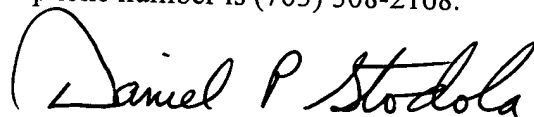
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Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Khoa Tran

August 11, 2001



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600